IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

RSA.No. 191 of 2007()

AS.130/2000 of I ADDL.SUB COURT, KOZHIKODE
OS.603/2000 of PRL.M UNSIFFCOURT,KOZHIKODE-I
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APPELLANT/APPELLANT/PLAINTIFF

BICHIKOYA, S/O.ABDUL KHADER,
KAMMUKKAKAM VEEDU, PALLIKANDI, NAGARAM AMSOM,
DESOM, KOZHIKODE TALUK.

BY ADV. SRI.SIBY MATHEW
SMT.P.A.REZIYA

RESPONDENTS: DEFENDANTS
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1. **STATE OF KERALA, REPRESENTED BY**
THE DISTRICT COLLECTOR, KOZHIKODE CIVIL
STATION, NEDUNGOTTUR AMSOM, DESOM,
KOZHIKODE TALUK.

2. **KOCHEEBI, W/O.AHAMED, KAMMUKKAKAM**
VEEDU, P.KUMARAN, NAGARAM AMSOM DESOM,
KOZHIKODE TALUK.

3. **SAINABI, W/O.MOIDEENKOYA,**
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

4. **AYISHABI, W/O.MOHAMMED KOYA,**
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

5. **ABDUL LATHEEF, S/O.ABDUL KHADER,**
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

6. SOUDATH, W/O.MOHAMMED KOYA,
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

7. RAMLATH, W/O.SALEEM,
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

8. JAFFER, S/O.ABDUL KHADER,
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

9. MUJEEB RAHMAN, S/O.ABDUL KHADER,
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

10. SUNITHA, W/O.RAFI,
KAMMUKKAKAM VEEDU, NAGARAM AMSOM, DESOM,
KOZHIKODE TALUK.

BY GOVERNMENT PLEADER

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A. NO. 191 OF 2007

Dated this the 6th day of December, 2007

J U D G M E N T

Plaintiff in O.S. 603/2000 on the file of Munsiff Court, Kozhikode is the appellant. Respondents are defendants. Plaintiff instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint schedule property along with other land was originally entrusted to P.V.Abdul Khader, father of the appellant, by the Port Department in 1960 as per lease agreement and Abdul Khader was conducting a coir factory and while so in 1963-64 he entrusted it to M.M.Thybali retaining his status as Manager under an oral entrustment. Another land adjacent to the factory having an extent of 800x20 ft. was also in the possession of appellant as lease hold property. Thybali received property having a total extent of 10.50x80 ft. and was conducting the coir factory under the name and style of “M.P.Rope Works”. In 1985, that property was returned back to Abdul Khader after receiving consideration. Since then, it is functioning under the name Sadhu Coir Works with 50 employees and now 30 employees are working there. The said employees with their family are depending on the income being derived from the coir factory. It was also contended that the factory is having electricity and telephone connections. In the meanwhile, some area bound the said land was taken by the

Revenue Department for development of Beach road. Plaint schedule property in possession of the appellant is having kuzhikore effected by the appellant or his predecessor. On 31.1.1997 Abdul Khader died. Thereafter appellant along with other defendant are in possession of the property. Appellant and his predecessors have been in possession of the property uninterruptedly for the last more than 40 years. The Government did not take any action under Land Conservancy Act. So Government has lost the title by adverse possession and respondents are not entitled to tress pass into the plaint schedule property or demolish the building or remove appellant from possession of the property. It was also contended that on 23.8.2000 some officers of the Revenue Department came to the plaint schedule property and demanded demolition and removal of the building for the purpose of road works. So respondents are to be restrained from demolishing the building. First respondent resisted the suit contending that appellant has no right in the plaint schedule property and PWD is proceeding with the work of road development. Because of the obstruction caused by the appellant, the work could not be completed in that area. The suit is bad for non-joinder of PWD. It was contended that appellant or his predecessor was not in possession of the property and they have not perfect right by adverse possession and appellant is not entitled to the decree sought for.

2. Learned counsel on the evidence of PWS 1 and 2, Exts. A1 to A63 and C1 & C2, dismissed the suit holding that appellant did not establish the title by adverse possession and holding that first respondent is entitled to take possession of the property. Appellant challenged the judgment before the Sub court, Kozhikode in A.S. No.130/2003. Learned sub judge on reappreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard. The argument of the learned counsel is that courts below did not properly appreciate the facts or the evidence and it should have found that Abdul Khader has been in possession of the property for the last more than 40 years and title of the State has been lost by adverse possession and limitation. It was further argued that Government has not taken any proceedings under Land Conservancy Act and it establishes that even if Government has any right, it was lost. It was also contended that courts below should have granted a lesser relief even if, the major relief sough for cannot not grated.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. Plaint schedule property is admittedly Government land. Appellant claimed that it was entrusted to his father Abdul Khader and he has been in possession of the property since

then and Government has not taken any action under Kerala Land Conservancy Act and as appellant is continuing the uninterrupted possession of the property, title of the Government is lost. But apart from contending that plaint schedule property was entrusted with the Abdul Khader, no evidence was produced to prove the entrustment. Even the nature of the entrustment was not disclosed there was no case of an assignment of the land. Hence even if there was an entrustment, it could only be either a lease or license. In both the case appellant cannot claim adverse possession either against the licensor or land lord. Courts below on the evidence rightly found that appellant or his predecessor did not establish title to the property perfected by adverse possession. Learned counsel argued that even if appellant is not entitled to a decree on the basis that he has not perfected title by adverse possession, courts below should have granted a lessor relief as appellant cannot be evicted other than by due process of law. But appellant has not sought a decree restraining first respondent from taking possession other than by due process of law. There was no case that there was an attempt on the part of the Government to take possession of the property. Facts of the case reveal that the suit was dismissed on 29.3.03 and first appeal was dismissed on 29.11.06. If there was attempt to evict appellant other than by due process of law Government could have done it as the first appeal was dismissed more than one year back. In such circumstances I find

reason to grant the limited relief sought for by the Appellant. As no substantial question of law is involved appeal is dismissed in limine. It is made clear that dismissal of the appeal will not prevent appellant from claiming right, if any, available under Land Conservancy Act.

M.SASIDHARAN NAMBIAR, JUDGE

vps